CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2
July 8, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@city.newport-beach.ca.us

SUBJECT: Appeal – Aerie Dock Project at 201-207 Carnation Avenue

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ISSUE

Should the Aerie project applicants at 201-207 Carnation Avenue be permitted to replace the existing double U-shaped float with a dock system capable of berthing 8 vessels for residents and 1 guest side-tie? Based on the recent findings of the Harbor Commission Aerie Task Force, the applicant is appealing the Harbor Commission's April 2009 review which concluded the project does create a significant impact on navigation and recreational boating in the harbor.

RECOMMENDED ACTION

The Harbor Commission is requested to:

1. Review the findings of the Harbor Commission Aerie Task Force and provide comments on the dock system's overall design. Harbor Resources will forward this input to the City Council who will review the entire project as a whole.

DISCUSSION

On April 8, 2009, the Harbor Commission reviewed the dock portion of the Aerie project along with the Environmental Impact Report (EIR). There was much discussion from the Commission and the public about the impact that this proposed dock system would have on navigation in the Entrance Channel. As a result, the Commission made an advisory motion which was: *"While not opposed to the expansion of the existing dock and its area and capacity, we believe the size and configuration of the proposed dock would create a negative impact on navigation and recreational boating in the harbor."* However, the Harbor Commission offered to assist the applicant in further refining their dock design. The original staff report and minutes of the April Harbor Commission meeting are available online at: http://www.city.newport-beach.ca.us/hbr/HarborCommissionAgendas/HarborCom.asp

Subsequently, at the May Harbor Commission meeting, an Aerie Task Force was formed with three members of the Commission: Marshall Duffield, John Corrough and Don Lawrenz. On May 30, 2009, the Task Force visited the site, along with the applicant, and completed a field survey of the existing and proposed dock layout. Their completed report is attached in Exhibit 8. The Task Force presented their findings at the June 10, 2009 Harbor Commission meeting at which time the applicant requested his project be appealed and reconsidered by the full Commission.

Special Conditions

To refresh, staff has proposed several Special Conditions which the Harbor Commission may evaluate and advise modifying as appropriate. Aside from the routine conditions, these unique Special Conditions are:

1. In accordance with Municipal Code 10.08.030 A. the project applicant shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases:.. For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."

2. The contractor shall post and update a two week schedule of construction activities at a location(s) easily accessible to local residents.

3. In accordance with Municipal Code 10.28.040 the following noise regulations apply: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."

4. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.

5. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.

6. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction.

7. The project applicant and its successors are notified that even though the proposed dock system replaces an existing dock system, the new docks will be constructed in the Entrance Channel to Newport Bay which is subject to surge and swell activity which may cause damage to the dock system and vessels berthed therein. It is the responsibility of the project applicant and its successors to maintain and operate the dock system to minimize damage to the dock system and vessels. The dock system shall be subject to nuisance abatement per Title 17 of the Municipal Code, if in the opinion of the Harbor Resources Manager, it presents an endangerment to other facilities or vessels in the harbor.

8. The project applicant must remove the existing dock system including the gangway and pier within 90 days of receiving all final regulatory permits allowing the construction of the replacement dock system.

9. The vessels that will be side-tied to the outside, bayward-most float shall not extend into the harbor more than 24' feet from the edge of this outside, bayward-most float.

10. The guest side-tie on the north end of the dock system shall only be available for vessels less than or equal to 30 feet in length. This slip shall be used for guest berthing only and will not be used for any permanent, long term vessel storage, and will not be rented or leased.

11. The number of boat slips approved in the final design must be the same as the number of dwelling units approved by the City Council in the final project approval.

PUBLIC NOTICE

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) and jobsite posting on June 23, 2009 and also posted on the City's website on July 2, 2009. See Exhibit 7.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

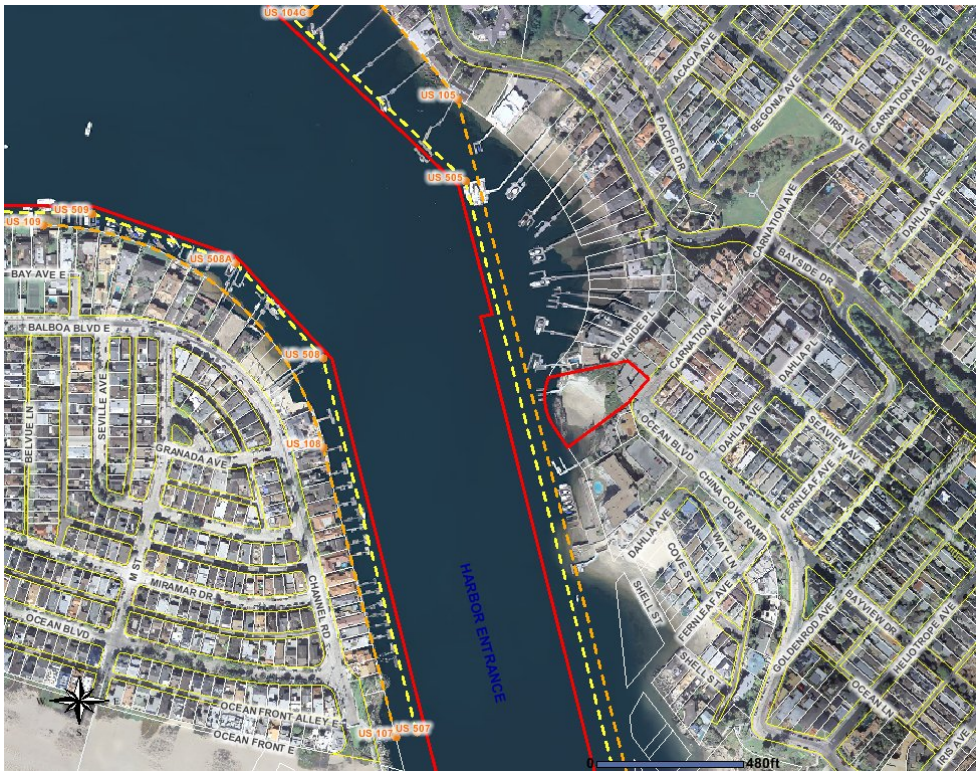
An EIR (SCH# 2007021054) has been prepared for the entire project which includes both landside and harbor improvements. The City Council will make the final determination as to the adequacy of the EIR. After this point, Harbor Resources staff may issue an Approval in Concept with Special Conditions for the dock portion of the project, assuming the EIR has been approved. If the final review process suggests substantial changes to the dock design, then staff may return to the Harbor Commission for review in the future.

Prepared by:

_____
Chris Miller
Harbor Resources Manager

Attachments:
Exhibit 1: Vicinity Map
Exhibit 2: Existing Dock Layout
Exhibit 3: Proposed Dock Layout
Exhibit 4: Proposed Dock Layout with Dimensions
Exhibit 5: Proposed Dock Layout with Channel Lanes
Exhibit 6: Vicinity Map with Eelgrass
Exhibit 7: Public Notice
Exhibit 8: Aerie Task Force Field Survey

Exhibit 1
Vicinity Map



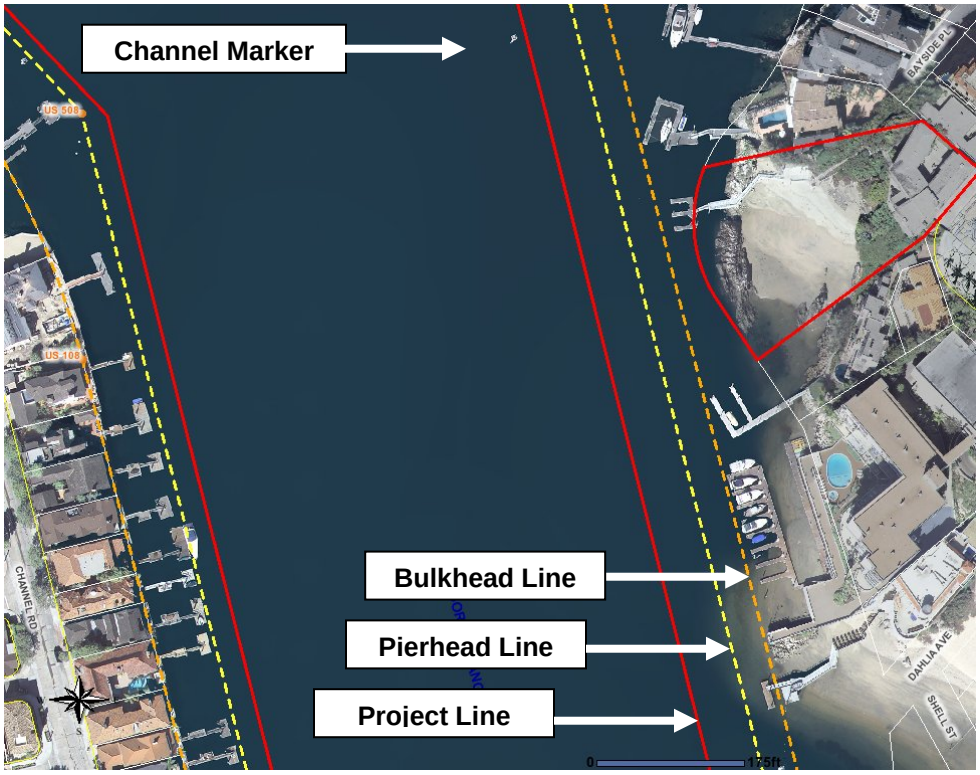


Exhibit 2
Existing Dock Layout

Exhibit 3
Proposed Dock Layout

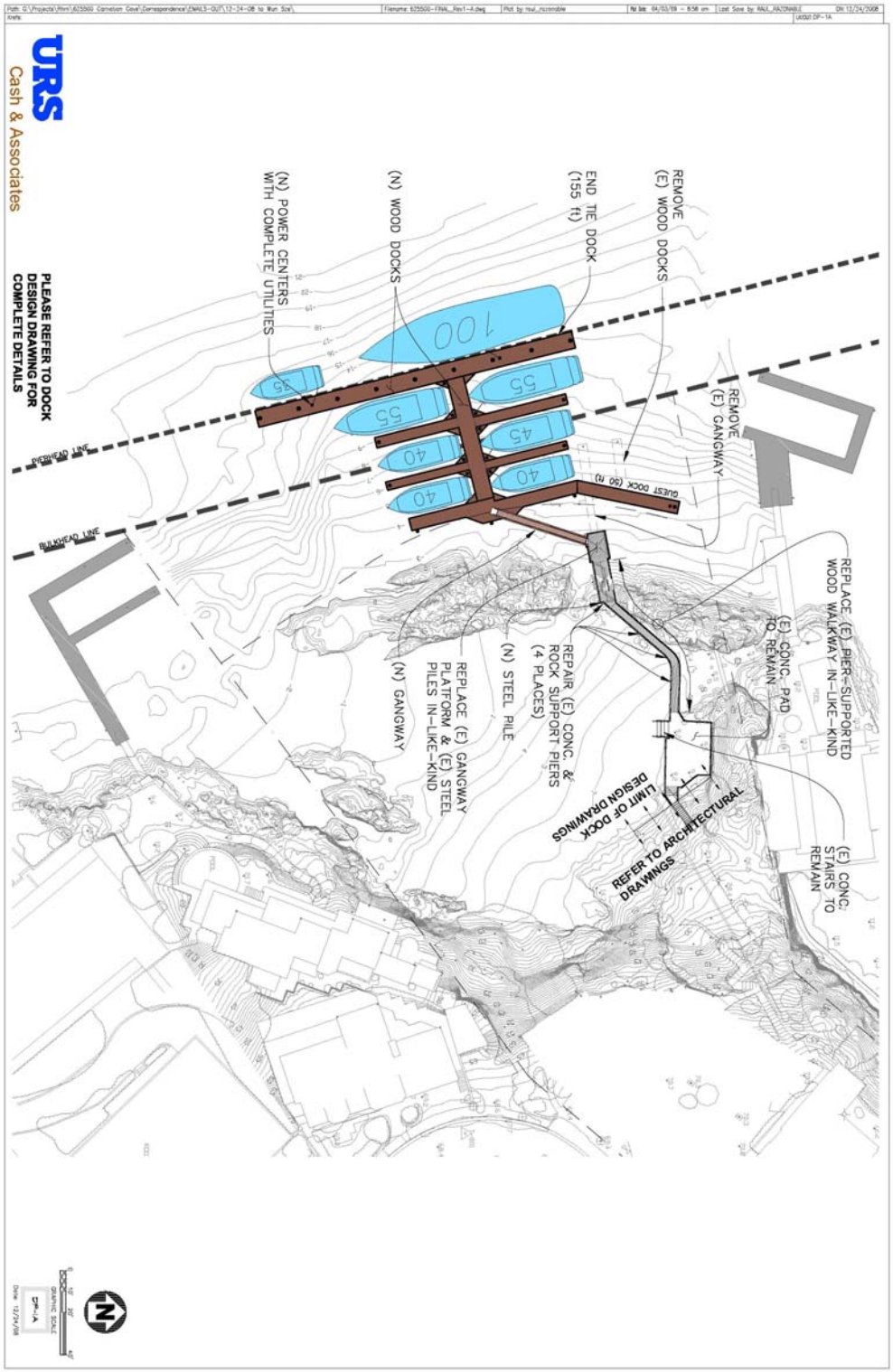


Exhibit 4

Proposed Dock Layout with Dimensions

Exhibit 5

Proposed Dock Layout with Channel Lanes

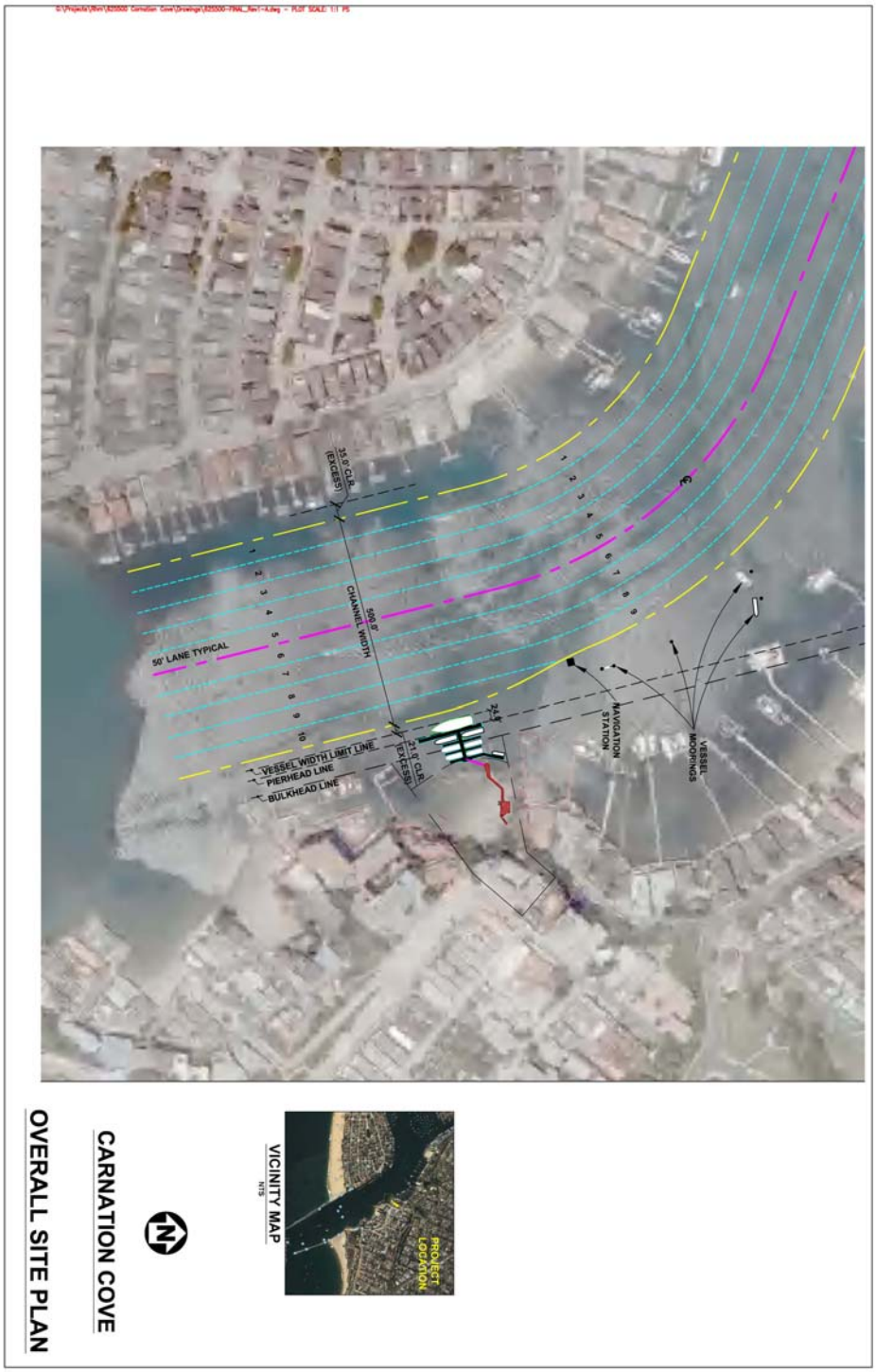


Exhibit 6

Vicinity Map with Eelgrass

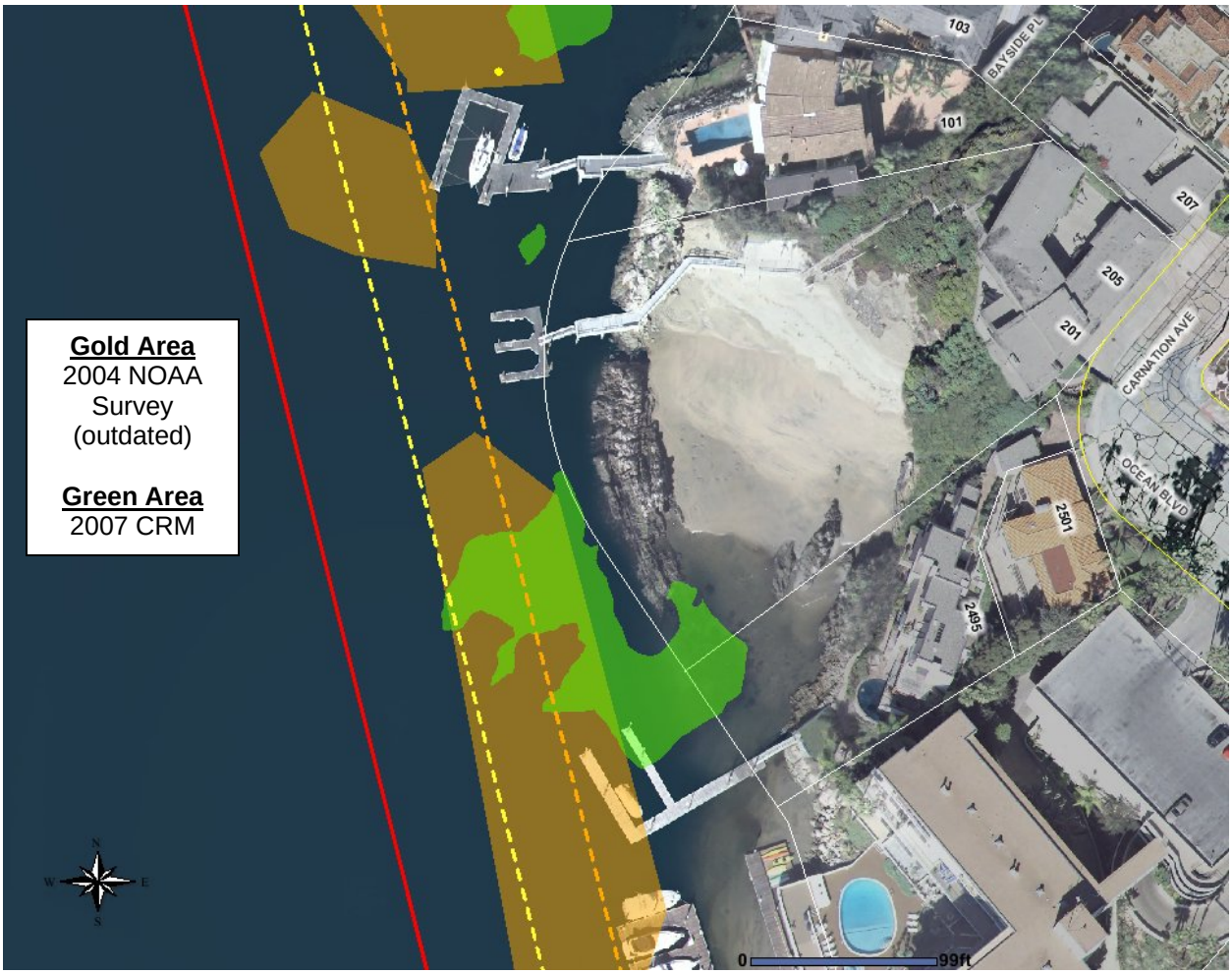


Exhibit 7
Public Notice

CITY OF NEWPORT BEACH

HARBOR RESOURCES

PUBLIC NOTICE

201 - 207 Carnation Avenue
Dock Replacement Project

The project applicant at 201 – 207 Carnation Avenue (Aerie) is proposing a project which includes replacement of an existing two slip dock system capable of berthing four vessels, with a system capable of berthing up to nine vessels. In addition, the upland property will be rebuilt with 8 condominiums. The Harbor Commission has been asked to advise the City Council on the dock replacement portion of the project only.

The Harbor Commission previously considered this project on April 8, 2009 and they had concerns about the dock's impact on navigation and recreational boating in the harbor. A Harbor Commission Task Force was subsequently formed to further study the proposal and possible alternatives. At the June 10, 2009 Harbor Commission meeting, the Task Force concluded that the project does comply with the harbor requirements and does not create a significant impact on navigation and recreational boating in the harbor.

Therefore, the project applicant is appealing the project for the entire Harbor Commission to reconsider. The Harbor Commission will hear this matter on:

Wednesday, July 8, 2009
6:00 PM
City Hall Council Chambers
3300 Newport Boulevard

The Harbor Commission agenda and staff report will be available online by July 2, 2009, at: http://www.city.newport-beach.ca.us/hbr/HarborCommissionnew.html

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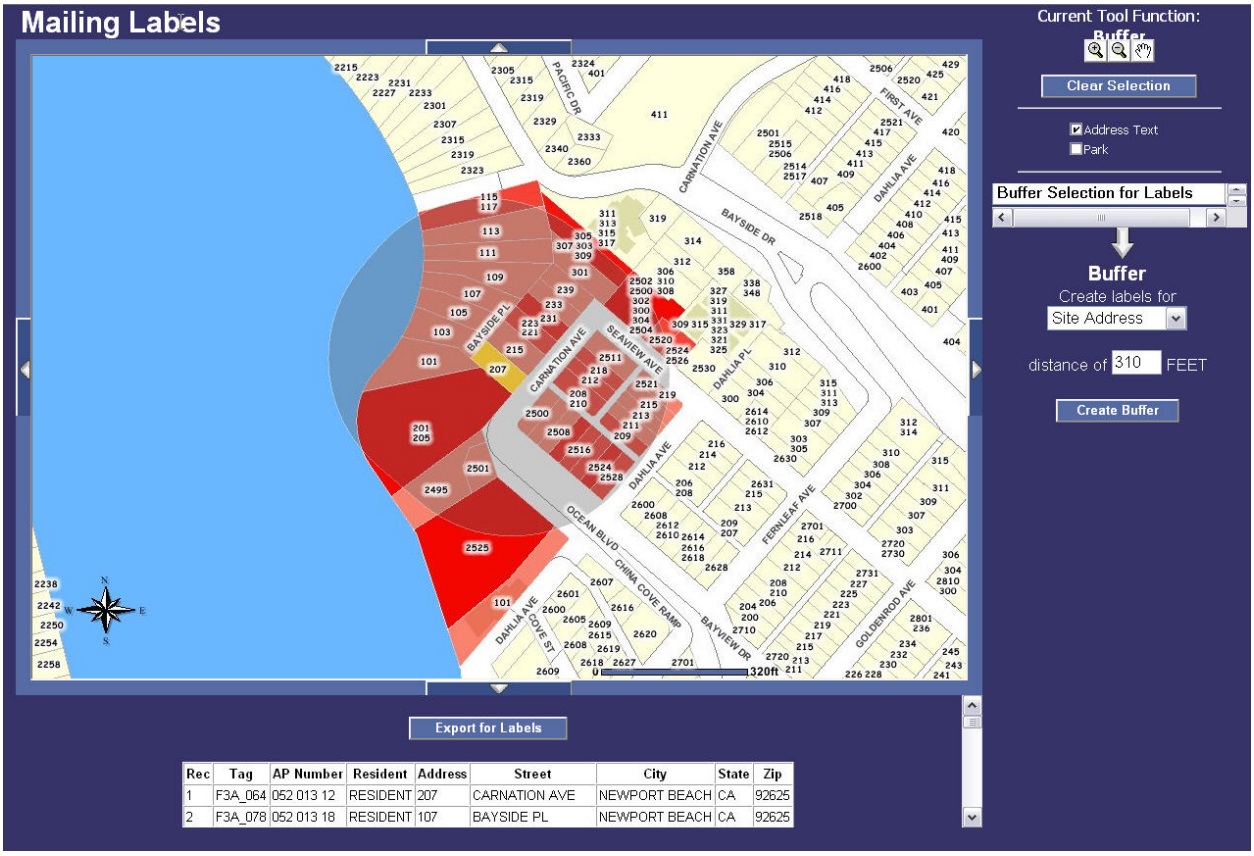
Public Outreach 310' Radius from Project



Rec	Tag	AP Number	Resident	Address	Street	City	State	Zip
1	F3A_064	052 013 12	RESIDENT	207	CARNATION AVE	NEWPORT BEACH	CA	92625
2	F3A_078	052 013 18	RESIDENT	107	BAYSIDE PL	NEWPORT BEACH	CA	92625

Exhibit 8

Aerie Task Force Field Survey

Harbor Commission Aerie Docks Subcommittee Field Survey Memorandum

Background

At the April 8, 2009 Newport Beach Harbor Commission meeting, an advisory motion was passed unanimously that stated:

> " While not opposed to the expansion of the existing dock and its area and capacity, we believe the size and configuration of the proposed dock project would create significant negative impact on navigation and recreational boating in the harbor."

Unresolved Issues

Subsequent discussion among the Commissioners during this meeting, and during a visit by three commissioners to the site (Rodheim, Chairman Duffield & Corrough) indicated that there were a number of unresolved issues and internal HC disagreements with regard to the actual potential extent to which the project might "…create significant negative impact on navigation and recreational boating in the harbor", versus a "perceived/speculated" impact.

Subcommittee Created to Perform Field Survey

As a result, an Aerie Docks HC subcommittee was created, comprised of 3 Commissioners (Chairman Duffield, Lawrenz, Corrough) , who were self-tasked with creating an on-water survey and simulated layout (with properly located and anchored buoys) of the marina, based upon the current engineering drawings for the project, to examine these HC concerns.

Intent and Scope of Survey

The intent of this survey was to visually and physically illustrate, with a high degree of accuracy on the project water area, the actual physical relationship of the proposed dock system to the following specific elements of navigation and water area definition:

a. **The existing 3-slip dock system** to be removed and replaced, new pier access ;

b. **The existing 500' Federal navigation channel** as defined in navigation charts and the engineering plans, the Federal/City Project Line (east channel edge) and the existing Federal navigation aid "R6" consisting of a vertical steel pole , red triangular daymark and light signal with the characteristics Fl R 4S 3M;

c. **The existing adjacent docks** and water areas whose position and navigational approaches were considered and incorporated in the overall proposed new dock configuration, as well as other existing docks in the Carnation Cove area for which the City/HC have granted approvals;

d. **The existing City Bulkhead Line, Pierhead Line, and Federal Project Line** as shown on the project engineering drawings and City documentation of the proposed docks, and the actual use of the navigation channel and adjacent waters;

e. **The existing Shoal Buoy** and shoal to the south, roughly on the Pierhead Line;

Additionally, the continuing general accessibility to the water areas between the navigation channel and the proposed docks/docked vessels as well as the water areas adjacent to and behind these proposed docks/vessels for use by various types of watercraft ranging from small vessels engaged in fishing, kayaks, sailboats and powerboats was informally assessed.

Conduct of Field Survey

On Saturday May 30th, 2009, the Aerie Docks Field Survey was conducted at the project site and in surrounding waters from approximately 12:30 PM to 3:30 PM.

Conditions were overcast, wind S/SW at approx. 6-8 knots, tide slack at start (12:30), rising to a day high of +4.7' at approx. 2:15 PM, creating an estimated 0.8 knot flood current during survey.

In attendance were:

- Chairman Marshall Duffield with an 18' Duffy, digital camera

- Commissioner Donald Lawrenz with a 13' Whaler, 150' tape measure, 3 buoys with anchor tackle, compass and depth sounder, digital camera

- Commissioner John Corrough with project drawings, aerial photos, handheld GPS, handheld bearing compass, digital camera

- Rick Julian, project developer, who assisted from on the existing docks

Prior to the on-water survey activities, a discussion of process and measurements was held, using the project engineering/EIR materials (plans, aerial photos, etc. showing proposed dock locations, dimensions and the various Harbor Lines. (see attached drawings & photos)

The following control dimensions (from the URS engineering layout of the proposed docks) were established and utilized in the survey: (see attached drawings & photos)

- 53.5' (+/- 0.5') distance from the channelward edge of the existing center dock float (of three) on a magnetic bearing of 270 deg. (+/- 2 deg.) was to be used as a baseline for the location of Buoy #1 (15" dayglow red round plastic buoy) to mark the channelward NW corner of the proposed outer dock;

- 24.0' (+/- 0.5') distance, on on a magnetic bearing of 270 deg. (+/- 1 deg.), beyond the location of Buoy #1 was to be used as the location of Buoy #2 (6" dayglow red "pot" buoy) to mark the channelward edge of the 24' side-tie allowed along the channel face of the proposed outer dock;

- 155' (+/- 0.5') distance, on on a magnetic bearing of 180 deg. (+/- 1 deg.), from the location of Buoy #1 was to be used as the location of Buoy #3 (6" dayglow red "pot" buoy) to mark the channelward SE corner of the proposed outer dock.

The on-water placement of the buoys in the locations described above was accomplished by Commissioners Lawrenz and Duffield using the Whaler, with Commisioner Corrough confirming bearings and distances from the baseline point on the existing center dock.

Commissioner Lawrenz utilized adjustable anchor rodes on the buoys to properly position them in relation to current and anchor position, within the required locational parameters.

Distances and positions were again confirmed after placement, using the tape and hand bearing compass, as well as the Whaler compass. Use of GPS for further location was considered redundant and no position recordings were taken. Buoys were in position at approximately 1:30 PM. (see attached drawings and photos)

Photographs of buoy locations and surrounding waters and landmarks were taken from the Duffy by Commissioners Corrough and Duffield, and from simulated approaches along the eastern edge of the navigation channel along both Project Line and Pierhead Line courses of approximately 150 degree (inbound course) view and 330 degree reciprocal view magnetic headings. (see photos)

Additional photos were taken from approximate 90 and 120 degree magnetic sailboat tack headings approaching the proposed dock locations (and reciprocals from the existing docks) to determine the potential effect on sailboats using the of water to be occupied by potential new docks and berth vessels, and the amount of water area potentially remaining available for tacking. No significant effect other than an 80'-90' shortening of the inbound 600'+ tack was noted- other tacks on either side of the dock ends could continue as deeply into the site as present, with the docks in place.

Ability for small, shallow-draft vessels to continue to approach/use the beach and to view the bluff bottom rock formations was also assessed informally and determined to be retained.

Observations from the existing docks by various Commissioners informally noted the courses and actions of vessels approaching and passing by/through the proposed dock area denoted by the buoys included sail and power vessels within the navigation channel , sail vessels outside the east edge of the channel (OCC Shields on an inbound tight beat course), and outbound kayaks and inbound rental fishing boats. No deviation was required.

Buoys and anchor tackle were recovered from their positions at approximately 2:45 PM.

Photographs from the top of the bluff overlooking the existing and future docks site and marker buoys were taken by Commissioner Duffield after the on-water survey. (see photos)

The on-site survey activities were concluded at approximately 3:30 and all Commissioners and vessels departed the site.

Aerie Docks Project Site Survey Findings and Conclusions

1. The proposed docks and their end-tied vessels would not present a direct navigational hazard to any vessels transiting within the established and marked 500' wide Newport Harbor federal navigation channel, and are located well outside the channel /Project Line boundary. This location/configuration complies with existing Newport Beach, federal laws.

2. The proposed docks and their end-tied vessels retain at least a 21'+ clear water buffer between the edge of the channel as defined by the Project Line and the nearest/largest permitted berthed vessel in the project. Small vessels (30' and under) typically meandering inbound or outbound through the open water area between the navigation channel and the project's docks and berthed vessels would continue to have adequate safe clearance between channel traffic and the project's largest berthed vessel for fishing, kayaking, canoeing, etc. This complies with the NB Approval in Concept conditions and EIR.

3. The proposed docks and their end-tied vessels would be located (and would appear) well inside (estimated 70'-80') a typical straight-line inbound course taken by a vessel to clear (by 50' apx.) the existing moored bait barge and the R6 fixed navigation mark, which is a typical day or nite inbound course and navigational waypoint (R6) during the high-traffic summer season when there is increased outbound and inbound traffic present. This continues the existing historic and necessary use of the navigation channel along this portion of its length

and configuration and indicates that the proposed project would not alter this use or compromise safe passage of a vessel depending on these waypoints and course.

4. The "narrowest point of the harbor" for safe/official navigational purposes is not at the project site nor is it created by the design construction and use proposed project, but rather occurs some 350' to the North beyond the proposed project area where the R6 mark marks the bend and narrowing of the channel to the NW. Inbound vessels navigating outside the eastern edge of the navigation channel and to the east of the R6 mark will encounter the County mooring field and private docks and shoreline extending from Carnation Cove beyond which block their route and will typically turn well before the R6 mark. This continues the existing historic and typical use of the navigation channel and adjacent waters along this portion of its length and configuration and indicates that the proposed project would not alter this use or compromise the safe passage of vessels inside the navigation channel or 20' outside of it to the east.

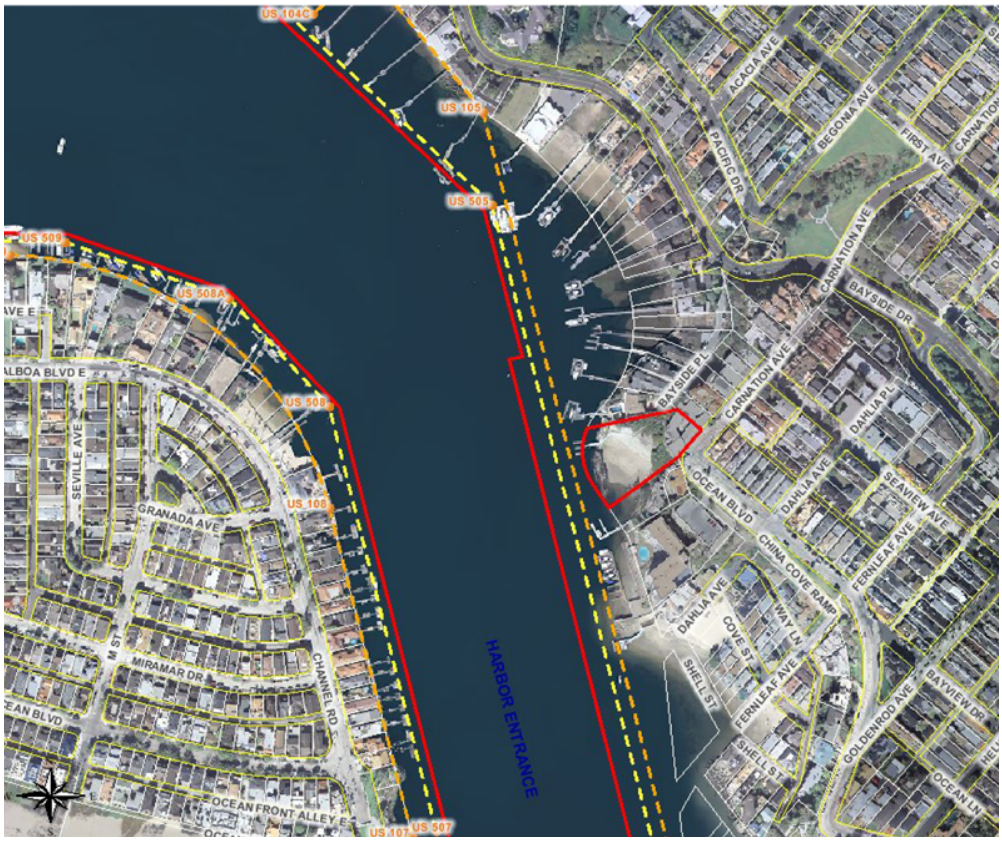
5. The design of the proposed docks and their berthed vessels would retain continued direct public-waters access and views to the existing beach by small beachable vessels (kayaks,etc.) and retain shallow water access and views to the bluff and the distinctive rock formation through an 88' wide channel to the north of the docks and an 80' wide channel to the south , both opening up to wider water areas and views as these areas are entered on passed by vessels. These design elements appear to comply with the Draft EIR and with City, State and Federal laws and requirements, as well as the spirit of community interests in preserving public access to and use of this water area, its beach and its views to the rock formation.

Summary Conclusion:

Based upon the field survey and analysis effort and its findings stated above, it is the unanimous opinion of the Harbor Commission Aerie Docks Survey Subcommittee that the proposed Aerie Docks project appears to comply with all City, State and Federal requirements as designed and, if constructed and operated as proposed and required, would NOT "…create any significant negative impact on navigation and recreational boating in the harbor" as stated in the previous Harbor Commission advisory motion.

Subcommittee Cautionary Note:

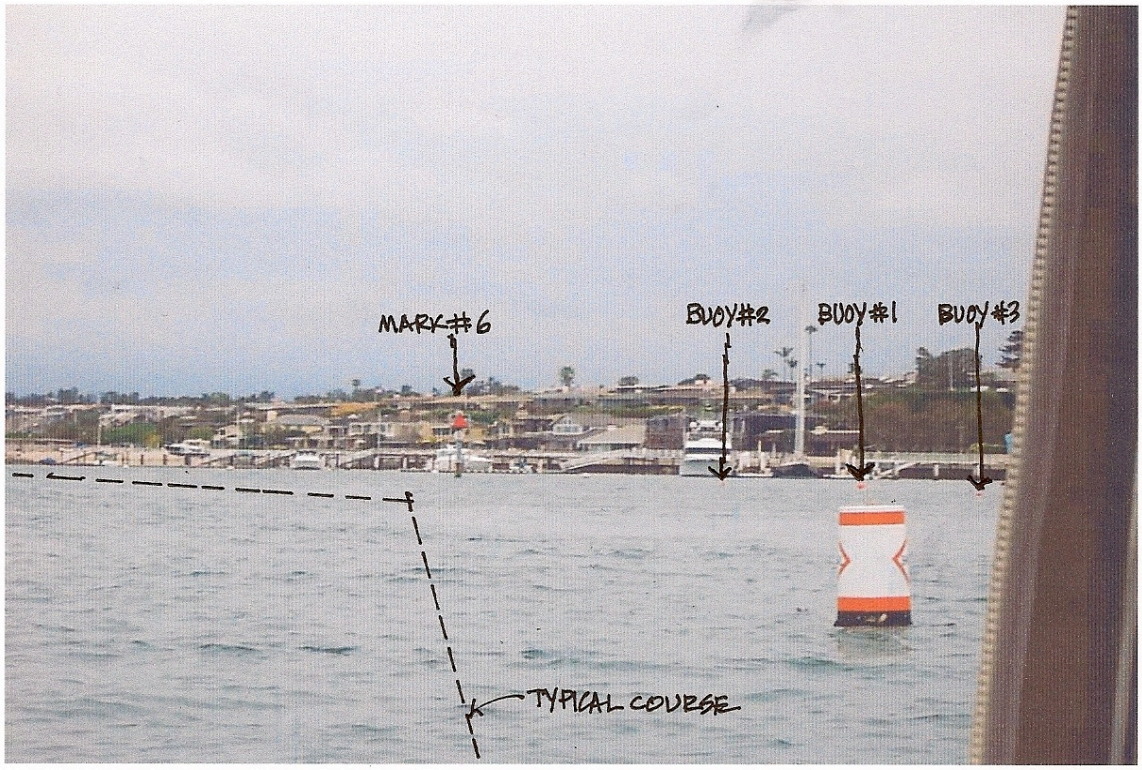
The preliminary layout and design of the proposed dock system and its structural pilings appears to comply with accepted professional marine engineering practice and the recommendations of the various technical studies for a project of this type on this site. The project has accordingly received preliminary City Approval in Concept (with a number of conditions). The owner, through acceptance of these conditions, must acknowledge and assume the risk that the Newport Beach entry channel and thus docks and vessels on this site are potentially subject to potentially severe wave conditions in extreme weather events which may exceed even the storm-resistant design parameters of the docks. The owner/developer has agreed to certain operational and management procedures for the proposed docks and berthed vessels including warnings to and required vessel relocation by the vessel owners, and other procedures, in case of an impending severe storm event. This Harbor Commission Subcommittee remains concerned that these requirements are sustained in place and continuously documented/updated subsequent to any construction of this project, and that the owner/operator properly insures, maintains and operates this project in compliance with the continuing requirements attached to its Approval in Concept. Future Harbor Commissions, Harbor Resources and City staffs should track this.



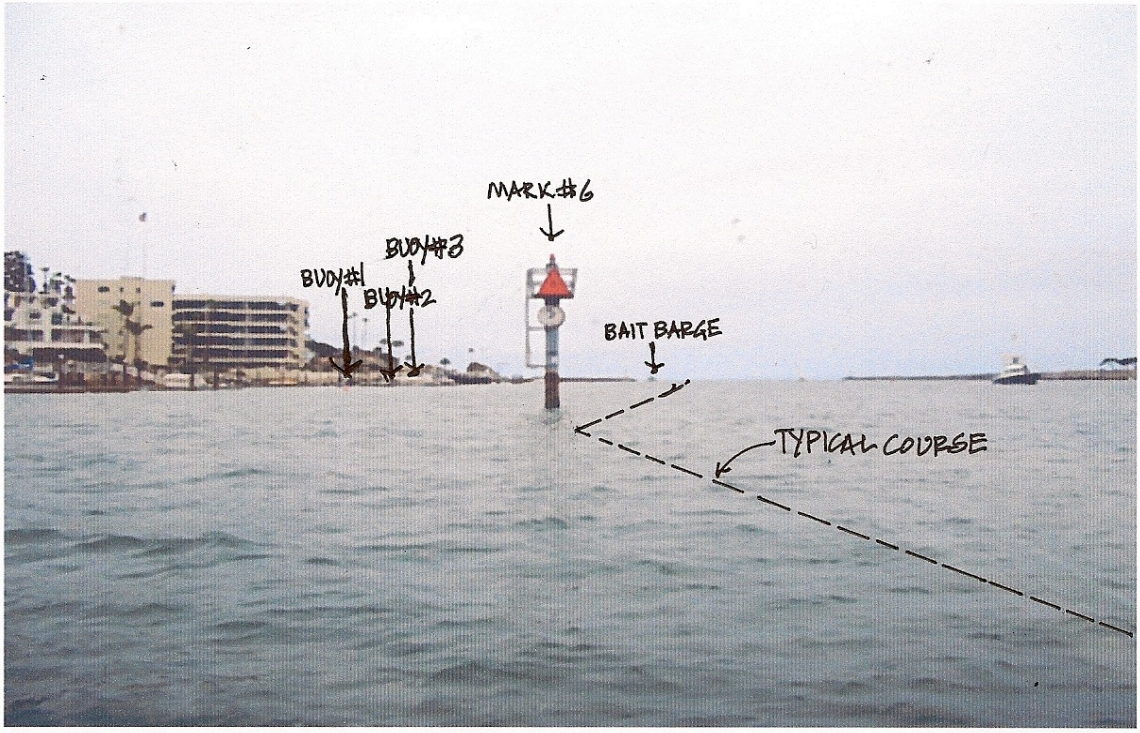
Aerie Docks Relationship to Navigation Channel & Harbor Lines

Aerie Docks Engineering Layout, Depths, Eel Grass, Harbor Lines


Buoy #3
Buoy #2
Buoy #1

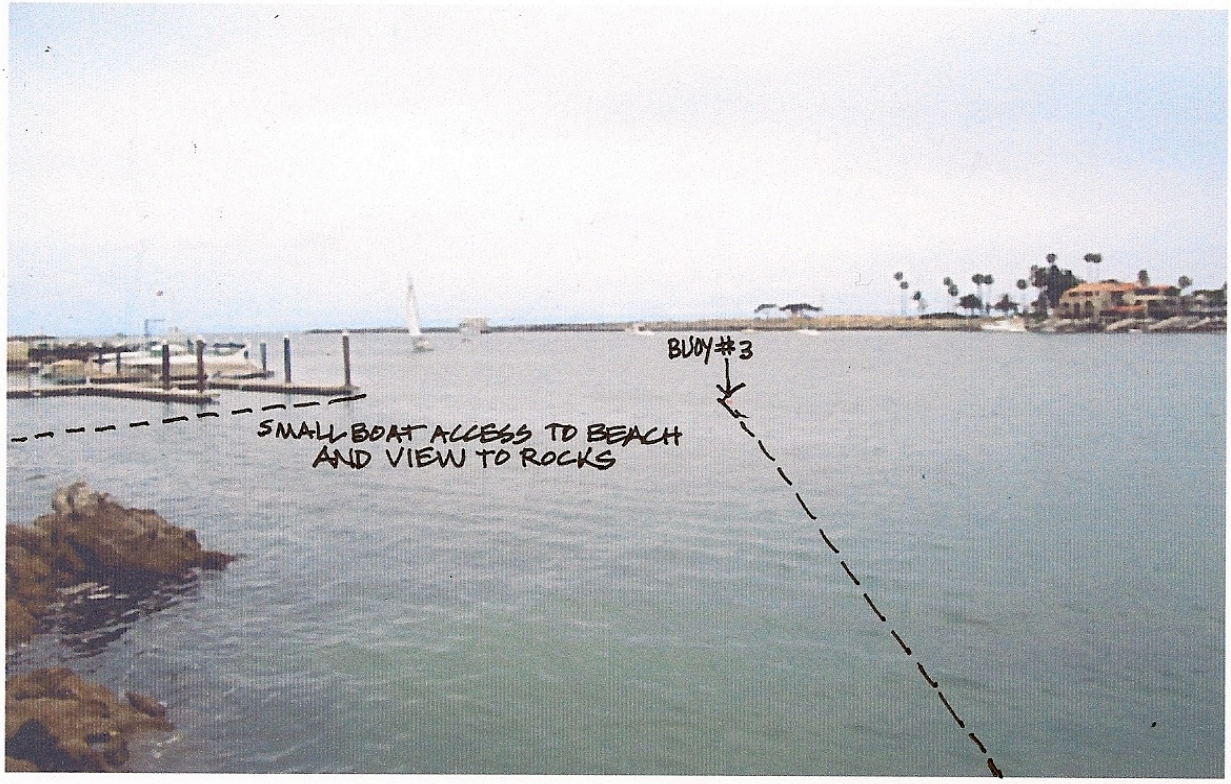


Inbound Course View at Shoal Buoy- Buoy #1 Above Shoal Buoy,#2 to left, #3 right



View on Reciprocal of Project Line Inbound Course, Buoys #1,2,3 to Left of Mark 6

Buoys #1 & # 2 and Existing Docks , View From Pier End



Buoy #3 and Adjacent Docks, View From Pier End